
PRELIMINARY DRAFT

No. 3306

PREPARED BY

LEGISLATIVE SERVICES AGENCY

2009 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 11-10-4-6.5; IC 11-12-4-3.5; IC 12-7-2-3.5; IC 12-15-35-51; IC 12-21; IC 31-9-2-52; IC 31-32-6-4.

Synopsis: Health, mental health, and addiction matters. Allows a department of correction (DOC) offender to be prescribed or administered mental health drugs that are available to a Medicaid recipient under specified circumstances. Requires DOC to adopt standards for the use of mental health drugs for county jails that are the same as the standards used by DOC. Requires the division of mental health and addiction to create a forensic technical assistance center. Creates the mental health Medicaid quality advisory committee as a permanent committee to advise the drug utilization review board. (The Medicaid quality advisory committee is a temporary committee that expires July 1, 2009.) Provides for the closing of a juvenile proceeding for the testimony of health care providers and certain other providers. Creates a multiagency task force on workforce development issues relating to individuals with mental health and addictions issues. Makes a finding that the state needs one mental health facility to be funded by bonding by the finance authority.

Effective: July 1, 2009.



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-10-4-6.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 6.5. (a) Subject to section 6 of this chapter, the**
4 **department shall allow a physician licensed under IC 25-22.5 to**
5 **prescribe or administer to an offender a drug:**

6 **(1) that is available to an individual who is eligible for**
7 **Medicaid under IC 12-15;**

8 **(2) that is administered to the offender to control a mental or**
9 **an emotional disorder; and**

10 **(3) that the offender:**

11 **(A) has been prescribed by a physician licensed under**
12 **IC 25-22.5; and**

13 **(B) has taken before the offender's incarceration in order**
14 **to stabilize a mental or an emotional disorder.**

15 **(b) The department may not require a physician to obtain prior**
16 **authorization before prescribing or administering a drug under**
17 **subsection (a).**

18 SECTION 2. IC 11-12-4-3.5 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2009]: **Sec. 3.5. (a) The department shall adopt rules under**
21 **IC 4-22-2 for county jails to govern the use of drugs for controlling**
22 **a mental or emotional disorder prescribed for a confined person.**

23 **(b) The provisions governing the prescription of drugs for**
24 **controlling a mental or emotional disorder by the department**
25 **under IC 11-10-4-6 and IC 11-10-4-6.5 shall be applied to the use**
26 **of prescription drugs for controlling a mental or emotional**
27 **disorder for a confined person in a county jail.**

28 SECTION 3. IC 12-7-2-3.5 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 2009]: **Sec. 3.5. "Advisory committee", for purposes of**
31 **IC 12-15-35-51, has the meaning set forth in IC 12-15-35-51(a).**



1 SECTION 4. IC 12-15-35-51 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: Sec. 51. (a) As used in this section,
4 "advisory committee" refers to the mental health Medicaid quality
5 advisory committee established by subsection (b).

6 (b) The mental health Medicaid quality advisory committee is
7 established. The advisory committee consists of the following
8 members:

9 (1) The director of the office or the director's designee, who
10 shall serve as chairperson of the advisory committee.

11 (2) The director of the division of mental health and addiction
12 or the director's designee.

13 (3) A representative of a statewide mental health advocacy
14 organization.

15 (4) A representative of a statewide mental health provider
16 organization.

17 (5) A representative from a managed care organization that
18 participates in the state's Medicaid program.

19 (6) A member with expertise in psychiatric research
20 representing an academic institution.

21 (7) A pharmacist licensed under IC 25-26.

22 The governor shall make the appointments for a term of four (4)
23 years under subdivisions (3) through (7) and fill any vacancy on the
24 advisory committee.

25 (c) The office shall staff the advisory committee. The expenses
26 of the advisory committee shall be paid by the office.

27 (d) Each member of the advisory committee who is not a state
28 employee is entitled to the minimum salary per diem provided by
29 IC 4-10-11-2.1(b). The member is also entitled to reimbursement
30 for traveling expenses as provided under IC 4-13-1-4 and other
31 expenses actually incurred in connection with the member's duties
32 as provided in the state policies and procedures established by the
33 Indiana department of administration and approved by the budget
34 agency.

35 (e) Each member of the advisory committee who is a state
36 employee is entitled to reimbursement for traveling expenses as
37 provided under IC 4-13-1-4 and other expenses actually incurred
38 in connection with the member's duties as provided in the state
39 policies and procedures established by the Indiana department of
40 administration and approved by the budget agency.

41 (f) The affirmative votes of a majority of the voting members
42 appointed to the advisory committee are required by the advisory
43 committee to take action on any measure.

44 (g) The advisory committee shall advise the office and make
45 recommendations concerning the implementation of
46 IC 12-15-35.5-7(c) and consider the following:



(1) Peer reviewed medical literature.

(2) Observational studies.

(3) Health economic studies.

(4) Input from physicians and patients.

(5) Any other information determined by the advisory committee to be appropriate.

(h) The office shall report recommendations made by the advisory committee to the drug utilization review board established by section 19 of this chapter.

(i) The office shall report the following information to the select joint commission on Medicaid oversight established by IC 2-5-26-3:

(1) The advisory committee's advice and recommendations made under this section.

(2) The number of restrictions implemented under IC 12-15-35.5-7(c) and the outcome of each restriction.

(3) The transition of individuals who are aged, blind, or disabled to the risk based managed care program. This information shall also be reported to the health finance commission established by IC 2-5-23-3.

(4) Any decision by the office to change the health care delivery system in which Medicaid is provided to recipients.

(j) Notwithstanding subsection (b), the initial members appointed to the advisory committee under this section are appointed for the following terms:

(1) Individuals appointed under subsection (b)(3) and (b)(4) are appointed for a term of four (4) years.

(2) An individual appointed under subsection (b)(5) is appointed for a term of three (3) years.

(3) An individual appointed under subsection (b)(6) is appointed for a term of two (2) years.

(4) An individual appointed under subsection (b)(7) is appointed for a term of one (1) year.

This subsection expires December 31, 2013.

SECTION 5. IC 12-21-4.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 4.1. Workforce Development Task Force

Sec. 1. (a) As used in this section, "task force" means the workforce development task force for mental health and addiction.

(b) The workforce development task force for mental health and addiction is established.

(c) The task force consists of the following individuals to be appointed by the governor:

(1) One (1) representative from the division of mental health and addiction (IC 12-21-1-1) who shall serve as chairperson of the task force.



(2) One (1) representative from the state department of health (IC 16-19-3-1).

(3) One (1) representative from the department of education (IC 20-19-3-1).

(4) One (1) representative from the department of correction (IC 11-8-2-1).

(5) One (1) representative from the Indiana professional licensing agency (IC 25-1-5-3).

(6) One (1) representative from the Indiana department of veterans' affairs (IC 10-17-1-2).

(7) One (1) representative from the commission on Hispanic/Latino affairs (IC 4-23-28-2).

(8) Two (2) representatives of different advocacy groups for consumers of mental health services.

(9) One (1) representative from a statewide coalition that represents minority health issues.

(10) One (1) member of the Indiana commission on mental health (IC 12-21-6.5-2).

(11) One (1) representative of community mental centers.

(12) One (1) representative from a college or university from a program for an undergraduate degree in social work.

(13) One (1) representative from a college or university with a school of nursing.

(14) One (1) psychologist licensed under IC 25-33 and engaged in private practice.

(15) One (1) representative from the Indiana University School of Medicine, department of psychiatry.

(16) One (1) representative from the Indiana University School of Medicine, department of:

(A) pediatrics; or

(B) internal medicine.

(17) One (1) representative from Riley Hospital for Children specializing in:

(A) infant; or

(B) toddler;

mental health.

(18) One (1) representative from Ivy Tech Community College, human service degree program.

(19) Two (2) representatives of consumers.

(d) The division of mental health and addiction shall provide staff for the task force.

(e) The task force shall study the following issues concerning individuals with mental illness:

(1) Increases in wages and other compensation for difficult to recruit mental health and addiction professional classifications.



(2) Loan repayment programs to attract individuals in classifications that provide services in mental health and addiction programs.

(3) Tuition reimbursement, including license and certification fees, for individuals in classifications that provide services in mental health and addiction programs.

(4) Internship opportunities for individuals in classifications that provide services in mental health and addiction programs.

(5) Mentoring opportunities for individuals in classifications that provide services in mental health and addiction programs.

(6) Revision of curriculum in master's, doctorate, and medical level programs to require courses in mental health and addiction.

(7) Marketing programs offering sign-on bonuses and referral incentives for difficult to recruit mental health and addiction professional classifications.

(8) Medical rate setting, including comparison of the state's rate with similar states.

(f) The task force shall present findings and make recommendations to the Indiana commission on mental health not later than August 2011.

(g) This section expires December 31, 2011.

SECTION 6. IC 12-21-5-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. The division shall do the following:

(1) Adopt rules under IC 4-22-2 to establish and maintain criteria to determine patient eligibility and priority for publicly supported mental health and addiction services. The rules must include criteria for patient eligibility and priority based on the following:

(A) A patient's income.

(B) A patient's level of daily functioning.

(C) A patient's prognosis.

(2) Within the limits of appropriated funds, contract with a network of managed care providers to provide a continuum of care in an appropriate setting that is the least restrictive to individuals who qualify for the services.

(3) Require the providers of services funded directly by the division to be in good standing with an appropriate accrediting body as required by rules adopted under IC 4-22-2 by the division.

(4) Develop a provider profile that must be used to evaluate the performance of a managed care provider and that may be used to evaluate other providers of mental health services that access state administered funds, including Medicaid, and other federal



1 funding. A provider's profile must include input from consumers,
 2 citizens, and representatives of the mental health ombudsman
 3 program (IC 12-27-9) regarding the provider's:

4 (A) information provided to the patient on patient rights before
 5 treatment;

6 (B) accessibility, acceptability, and continuity of services
 7 provided or requested; and

8 (C) total cost of care per individual, using state administered
 9 funds.

10 (5) Ensure compliance with all other performance criteria set
 11 forth in a provider contract. In addition to the requirements set
 12 forth in IC 12-21-2-7, a provider contract must include the
 13 following:

14 (A) A requirement that the standards and criteria used in the
 15 evaluation of care plans be available and accessible to the
 16 patient.

17 (B) A requirement that the provider involve the patient in the
 18 choice of and preparation of the treatment plan to the greatest
 19 extent feasible.

20 (C) A provision encouraging the provider to intervene in a
 21 patient's situation as early as possible, balancing the patient's
 22 right to liberty with the need for treatment.

23 (D) A requirement that the provider set up and implement an
 24 internal appeal process for the patient.

25 (6) Establish a toll free telephone number that operates during
 26 normal business hours for individuals to make comments to the
 27 division in a confidential manner regarding services or service
 28 providers.

29 (7) Develop a confidential system to evaluate complaints and
 30 patient appeals received by the division of mental health and
 31 addiction and to take appropriate action regarding the results of
 32 an investigation. A managed care provider is entitled to request
 33 and to have a hearing before information derived from the
 34 investigation is incorporated into the provider's profile.
 35 Information contained within the provider profile is subject to
 36 inspection and copying under IC 5-14-3-3.

37 (8) Submit a biennial report to the governor and legislative
 38 council that includes an evaluation of the continuum of care. A
 39 report submitted under this subdivision to the legislative council
 40 must be in an electronic format under IC 5-14-6.

41 (9) Conduct an actuarial analysis every four (4) years beginning
 42 July 1, 2000.

43 (10) Annually determine sufficient rates to be paid for services
 44 contracted with managed care providers who are awarded a
 45 contract under IC 12-21-2-7.

46 (11) Take actions necessary to assure the quality of services



required by the continuum of care under this chapter.

(12) Incorporate the results from the actuarial analysis in subdivision (9) to fulfill the responsibilities of this section.

(13) Create a forensic technical assistance center to support the development of forensic mental health and addiction interventions to assist in diverting individuals from the criminal justice system into treatment.

SECTION 7. IC 31-9-2-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009] : Sec. 52. "Health care provider", for purposes of IC 31-32-6-4, IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and IC 31-39-8-4, means any of the following:

- (1) A licensed physician, intern, or resident.
- (2) An osteopath.
- (3) A chiropractor.
- (4) A dentist.
- (5) A podiatrist.
- (6) A registered nurse or other licensed nurse.
- (7) A mental health professional.
- (8) A paramedic or an emergency medical technician.
- (9) A social worker, an x-ray technician, or a laboratory technician employed by a hospital.
- (10) A pharmacist.
- (11) A person working under the direction of any of the practitioners listed in subdivisions (1) through (10).

SECTION 8. IC 31-32-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. **(a)** Upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a child witness or child victim if the court finds that:

- (1) an allegation or a defense involves matters of a sexual nature; and
- (2) closing the proceeding is necessary to protect the welfare of a child witness or child victim.

(b) Upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a health care provider if the court finds that:

- (1) the testimony involves matters that would be protected under 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act of 1996 (HIPAA)); or**
- (2) the testimony involves matters that would be a privileged communication between a health care provider and the health care provider's patient.**

(c) Upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian,



1 the court may issue an order closing a proceeding during the
2 testimony of:

3 (1) a client and a:

4 (A) certified social worker;

5 (B) certified clinical social worker; or

6 (C) certified marriage and family therapist;

7 (2) a school counselor and a student; or

8 (3) a school psychologist and a student.

9 SECTION 9. [EFFECTIVE JULY 1, 2009] (a) The general
10 assembly finds that the state needs the construction, equipping,
11 renovation, refurbishing, or alteration of not more than one (1)
12 mental health facility.

13 (b) The general assembly finds that the state will have a
14 continuing need for the use and occupancy of the health center
15 described in subsection (a). The Indiana finance authority
16 established by IC 4-4-11-4 may provide the mental health facility
17 described in subsection (a) under IC 4-13.5.

